FULLY INFORMED JURY ASSOCIATION

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the FIJActivist

Newsletter of the Fully Informed Jury Association

Vol. 14, Issue 2 2002

CLE SEMINAR in San Fransisco September 28, 2002 see ad on back page!

FIJAcon V in Fort Lauderdale November 16th & 17th, 2002 see ad on back page!

Florida CLE see page 5

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LETTER FROM FIJA EXECUTIVE DIRECTOR

Iloilo Marguerite Jones

Greetings!

As you know, we have been through some changes in the past few months. We made it through thanks to the efforts of each of us, including you.

You will find a letter from Don Doig in this issue of the FIJActivist. Don has returned as Director of Publications, and we can look forward to his professional oversight for all FIJA publications, including the FIJActivist.

We have a lot of work to do. FIJA's primary goal that every juror in America will know his or her Constitutional rights and responsibilities has not yet been reached. Toward that goal, please share this issue and other FIJA literature with one new person every month. Give them a JPIK or other information. Explain how truly important it is for this knowledge to be passed along. I hope we can double our numbers in the next year. You can help by sharing FIJA literature personally with one new person every month. Talk with the person, explain how these Constitutional powers help to keep us all safe from tyrannical laws and courts. If you hear someone has been called for jury duty, encourage them to serve, and explain jury power to them.

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Juries, the Bill of Rights and Federal Power

by Don Doig

FIJA Publications Director and Co-Founder

The **jury system** has long been under attack in this country; now its very existence is threatened.

State power thrives on crisis, and since Sept. 11 the government has been moving to subvert the entire Bill of Rights, in particular the Fourth Amendment, Fifth Amendment, and Sixth Amendment, which includes the right to trial by jury.

First, unpopular minorities will face precedent-setting unconstitutional usurpations of their rights, then any American citizen may face a military tribunal or indefinite detention without benefit of due process of law or trial by jury.

The Bush administration has attempted to destroy the Writ of Habeas Corpus; has indicated that it will seek to use the military within U.S. borders for law enforcement in contradiction to the Posse Comitatus law; and, it has sought broad powers to wiretap citizens at will, without a warrant, follow their internet use and e-mail communications, videotape public spaces, and conduct secret warrantless searches. Pundits and officials are discussing rounding up masses of people for internment in concentration camps. There is talk of permanent curtailment of constitutional rights.

To quote George P. Fletcher in the American Prospect, v.13, 1, Jan.1-14, 2002, "In the words of the

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It's Good to Be Back

by Don Doig

After an absence of more than five years, I am rejoining the FIJA staff. Many of you will remember that I was the Co-Founder of FIJA. As National Coordinator, it was my job to serve as a writer, editor, activist liaison, media spokesperson and to oversee day to day operations and help establish policy positions. This was a position I held for approximately the first seven years of FIJA's history.

I am returning as Director of Publications. My job will include editing the *FIJActivist* and the FIJA web page. I will be joining an especially capable team. Iloilo Jones will serve as the Executive Director. Ilo is exceptionally capable, as she demonstrated in her previous roles as a management consultant to FIJA and in her very effective fundraising capacity. David Delo will be coming on board as Development Director, assisting Ilo in the vitally important role of fundraising. David served in this role in the past for FIJA, with great results. And finally, Administrative Director Kathy Ballard, who has been with FIJA from the beginning. If it were not for Kathy, FIJA would not have survived the turmoil of the last few years. She has truly held it together, and we all owe her a debt of gratitude.

At the most recent Board of Directors meeting, Charles Key resigned as Executive Director, and Larry Dodge and Larry Pratt resigned from the Board.

We will be working to expand our efforts to educate the legal community with appropriate targeted information in the form of a new information packet, which will also be appropriate for distribution to opinion leaders and the press. We believe it is important to focus on enhancing the intellectual presence of FIJA in legal and public policy debates nationwide, in order to increase our effectiveness.

I wish to thank you all for your hard work to date, and look forward to working with you in the future. We have a lot of vitally important work to do, as our increasingly authoritarian government seeks to destroy trial by jury along with the rest of the Bill of Right

For Liberty, Don Doig

TIPS SPIES

Sam Smith, Progressive Review Undernews (prorev.com),

July 24, 2002.

Should U.S. TIPS informants disclose that when they are on a jury? Under the Nazi government, court jurors were so afraid of informants working for the Gestapo, even on a jury or in the court house, jurors would go along with fascist policies to find innocent persons guilty. Jurors feared they could also be targeted by the secret police. Could this be the predictable result in America? Free Speech would be dead under such circumstances.

Like Nazi Germany, the U.S. has included in a recently introduced "U.S. Security Bill" a prohibition against "Homeland Security Employees" blowing the whistle on government agency corruption and crimes." Should this law come to pass, corrupt "Home Land Security Employees" will be free to use false statements and other evidence to frame U.S. citizens, seize their property and/or cause their disappearance without being questioned. Why are U.S. taxpayers being asked to support an SS structured organization?

The New FIJActivist

As long time readers will be aware, the format for the FIJActivist is a lot shorter than it used to be. This will be good news to readers who have complained it was too much to wade through. The shorter version saves us a lot of money as well.

The web page (www.fija.org) will take up the slack. For those wanting comprehensive information, we will be in the process over the next several months of upgrading the offerings there. Letters to the editor, for instance, will often be found there, for reasons of space limitations. We encourage letter writers to e-mail their letters to dondoig@in-tch.com.

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We also continue to inform the entire judicial system of the legitimacy of Constitutionally- mandated jury rights. Judges and prosecutors continue to attempt to suppress the rightful power of the jury to judge the law and to vote according to conscience. The right to trial by jury itself is under attack. We will keep you posted on the progress with our Continuing Legal Education seminars and other related efforts.

We come together as FIJA to preserve and protect our fundamental liberties. In light of recent events and recent national legislation, it is more important than ever that each of us educate our fellow citizens about jury rights. Keep up the great work! If you can think of more ways you can help, we need your input!

Yours for Liberty,

Iloilo Marguerite Jones

Executive Director

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Supreme Court's 1866 ruling *Ex parte Milligan*, the leading precedent on this issue:*'[T]he Constitution was intended for a state of war, as well as a state of peace, and is equally binding upon rulers and people at all times and under all circumstances.'* When the Sixth Amendment mandates that in "all criminal prosecutions" certain rights should apply, including the right to a jury trial, the framers mean what they say. And the Supreme Court has understood the injunction. It is undisputed law that if the civilian courts are open and functioning, the armed forces cannot convene a military commission or tribunal to try offenses that fall within the civilian courts' jurisdiction."

What has actually happened to date?

● Bush has sought executive branch control of legislative and judicial functions. He has issued an executive order to establish military tribunals for alleged terrorists in which the president decides who gets sent to the tribunal. The judge and jury are executive branch officials appointed by the secretary of defense. Conviction is by a two-thirds vote. The person arrested cannot invoke habeas corpus to get into a court of law to challenge the legality of the arrest, or the sufficiency of the evidence. There is no right to be charged by a grand jury. Convictions cannot be appealed to appellate courts.

● Executive branch control of legislative and judicial functions, and executive orders (laws issued by the President) are in violation of the Constitution. Executive arrest warrants violate the Fourth Amendment right to be secure against unreasonable searches and seizures.

● Bush's executive order states that he can have any person deported without a hearing. Academics and members of the establishment have even been floating the idea of officially-ordered torture. Is this what we can expect will replace trial by jury in the New World Order?

● The administration has subjected 1200 resident aliens to indefinite detention without charges. No terrorism charges have been brought against them. The Fifth Amendment states that no person (not "no citizen") can be "deprived of life, liberty, or property, without due process of law."

● U.S. citizen Jose Padilla is being held indefinitely without trial. Suspected, but not charged, of plotting to explode a "dirty" radiological bomb, authorities dropped the claim of a plot, but continue to hold him in a military brig in South Carolina. Padilla was first held as a "material witness." Just prior to a scheduled hearing in federal court to determine the legality of his detention, he was transferred to military custody. As a result, the court no longer has jurisdiction.

Secretary of Defense Rumsfeld said: "Our interest, really, in this case, is not law enforcement. It is not punishment." They are going to try to extract information from him.

On August 7, the Justice Department defied a federal judge's order in a case involving an American-born "enemy combatant", Yaser Esam Hamdi, captured in Afghanistan, refusing to turn over documents related to whether he was being properly classified as an enemy combatant, and held indefinitely without access to counsel.

In contrast, American John Walker Lindh, under pressure from civil libertarians, was accorded due process rights and a trial in federal district court—as were the 1993 World Trade Center bombing suspects, and Timothy McVeigh.

French citizen Zacharias Moussaoui, the alleged 20th hijacker, has been granted a trial in federal court. Because he is defending himself, Moussaoui has had his due process rights restricted. Facing the death penalty, he is not allowed to see a lot of the key evidence against him, or locate and talk with defense witnesses.

Native-born and naturalized citizens and even resident aliens are guaranteed due process of law by the Constitution, including habeas corpus, access to counsel, presumption of innocence, and the right to trial by jury, war or no war, according to established legal tradition, and no war has been declared by Congress. There is no basis for treating "alleged terrorists" as if they are outside of constitutional protections afforded by the traditional judicial system - there being no legitimate precedent available from past unconstitutional abuses of power.

To date, no one has appeared before a military tribunal. Though the order is still in effect, the proposal to implement military tribunals generated a lot of opposition from civil libertarians, and bad press. It appears that indefinite detention without trial may be the preferred approach at this time. The last time the US government did this, it interned tens of thousands of American

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citizens (Japanese Americans and some Germans and Italians)—during Word War II. We just got through making an apology and writing checks for millions of dollars in a feeble attempt to settle this incorrigible wrong.

We are assured by pundits that future administrations or congresses will reverse the infringements once the threat has passed. I don't think that is likely, and we can't countenance the loss of any more of our liberties: we are not likely to get them back. And we don't have many left.

Trial by Jury

Trial by jury remains one of the few constitutional tools we, the people, have to resist oppression. If the Bush administration is allowed to set precedent in the area of indefinite detention without charges being filed and without access to trial by jury, our liberties and our ability to control government oppression are indeed in danger.

The U.S. Supreme Court acknowledged the political function of the jury in *Duncan v. Louisiana, 391 U. S. 145, 155 (1968), wherein Justice Byron R. White wrote:* ***"A right to trial by jury is granted to criminal defendants in order to prevent oppression by the government."***

Already, in large part due to suppression of the power of the jury to vote its conscience through voir dire exclusions of independent jurors, exclusion of evidence and constitutional argument, and outright intimidation by the judge, we now have an enormous prison population in this country far greater than that of other countries.

Under the TIPS (Terrorism Information and Prevention System) federal informant program which Bush is trying to push through despite having been prohibited from doing so by Congress, jurors are going to be intimidated by the knowledge that a federal informant may be a fellow juror. Will they continue to feel free to discuss the case openly with other jurors, and to vote their consciences?

Until recently, California was under a court ruling that allowed a judge to tell jurors that they should report any attempt by other jurors to consider things other than the facts of the case; to question the law, the sentence, or justice. In Colorado, juror Laura Kriho was prosecuted for contempt of court after she voted her conscience and refused to convict a defendant.

Please speak out, write letters, do what you can to help protect the institution of trial by jury for all time. Please educate your fellow citizens. Ask everyone you know to spread the word.

FIJActivist Q & A

Question: Does jury nullification apply to both criminal and civil courts, or just to criminal courts? I ask because Article 16 of the Oregon Constitution refers only to criminal cases.

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Answer: While juries can nullify in civil as well as criminal cases, there are several reasons why jury nullification is 99% a criminal law doctrine:

The double jeopardy rule only applies to criminal cases. This means that, even if one party with the burden of proof loses before the jury, they can appeal and try the case over again from the beginning. In a criminal case, if the party with the burden of proof - always the prosecution - loses, the case is just over.

A judge can grant judgment notwithstanding the verdict, or order a reduction (remittitur) of the jury verdict, in a civil case. A judge can direct an acquittal, but he can never direct a conviction or interfere with a jury's verdict of "not guilty."

A criminal case involves the government going after a citizen. The purpose of trial by jury in a criminal case is to prevent oppression by the government. In a civil case, this is only an issue where the government is a litigant.

Clay S. Conrad

Question: This is quite a revelation! It's not that I'm having difficulty understanding the rational content but I've always believed that jurors were supposed to base their decisions on the letter of the law and not ethics or morality. If a father shoots the man who brutally raped and murdered his child (hypothetical only) and I was on the jury, I'm sure I would want to find him not quilty. But if 3 witnesses saw him pull the trigger and the entire jury voted not guilty, wouldn't the judge simply set aside the verdict and say we didn't do our duty under the law? I'm confused.

C.G.>>

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Answer: To answer your question, no. No matter how clear the evidence of guilt is, if the jury acquits, their verdict is final and absolute. That's what the Double Jeopardy clause of the Fifth Amendment is all about - once a person has been found not guilty, they cannot twice be put in jeopardy for the same offense. Similarly, a juror cannot be prosecuted for their verdict, no matter how clearly opposed to the evidence it is. This is why a judge cannot "direct" a verdict of guilty no matter what the evidence - although he can direct a verdict of not guilty. Of course, in a civil case, he can direct a verdict in either direction.

To understand why jurors have such incredible power, you have to look into the history of the institution. The Founders envisioned jurors as the final check and balance on government. By giving jurors a decisive veto over government action, they intended to hold government to the spirit of the Constitution - a document which was adopted by the people, and which could only remain vital by continued citizen participation in government. Certainly, the Supreme Court could strike down laws that were against the letter of the Constitution - but that always left room for injustices and oppression that was technically allowable, even if morally intolerable.

Giving the citizens this veto ensured, to the Founders, that government could never punish a citizen for acts that were not broadly condemned by his or her neighbors. Certainly, we know that is not now the case, because jurors have been submissive. I have seen jurors upset and tormented by verdicts they have felt coerced into delivering - because they felt controlled and manipulated by the judge.

In short, being a juror should mean never having to say you're sorry. If the law is just and justly applied, jurors should be proud of their verdicts and confident that any sentences meted out as a result are fair and equitable. When jurors lack that confidence, it means two things: first, that the system is no longer under control of the citizens, and second, that the Founder's ideal for American democracy has been perverted.

Sincerely,
Clay S. Conrad

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This continuing Legal Education is sponsored by the Fully Informed Jury Association and will cover a nullification defense from start to finish.

- Ethics of a Nullification Defense–Clay S. Conrad
- Criminal Prosecutions in Intellectual Property– Nancy Lord Johnson
- Forensic Jury Persuasion– Mike Ware
- The Role of the Prosecutor–Patricia Michl
- Opening Statements
- Closing Arguments–Michael Minns
- What wins Cases
- Jury Persuasion & Empowerment

Additional topics and speakers will be included as confirmed

When: Friday, November 15th, 2002
Time: Continental Breakfast 7:30 A.M. Registration begins at 8:00 A.M.; Seminar begins at 8:30 A.M.
Price: $250.00
Where: Fort Lauderdale Marriott North, 6650 N Andrews Ave, Fort Lauderdale, Florida 33309
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THE JURY BOX

An 'unreviewable and irreversible power ... to acquit'

by Vin Suprynowicz

I was called for jury duty again July 29. Judge John McGroarty of the 16th Department was attempting to seat a jury for the murder trial of one Daniel R. Jones, charged with stabbing his younger brother Steven to death a year ago. Twelve prospective jurors were seated — I was one of 30 "extras" held in reserve to replace any of those fortunate 12 who should be dismissed, either for cause or via the peremptory challenges allowed the attorneys

both of the state and of the defense. My fellow jurors-to-be seemed a decent enough lot, but honesty requires me to report that the spectacle of the "voir dire" questioning led and encouraged by Judge McGroarty was pretty pathetic.

"Is it ever justified to use deadly force against someone who is not, himself, armed with a deadly weapon?" asked prosecutor Marc DiGiacomo. One after another, 11 jurors agreed that can never be justified.

Finally the 12th juror, a woman of middle age obviously more thoughtful and assertive than the rest, replied, "I can imagine a circumstance where a small woman, for instance, is about to be raped. She would have the right to pull out a gun or a knife and say, 'Stop or I'll kill you'; that

would be justified." Like kindergartners hearing an answer they liked better, the other 11 now virtually waved their hands in the air, asking if they could change their responses, too.

Here we see another unintended consequence, I believe, of our having become a disarmed nation. Young boys being taught to shoot the rifle used to receive their first instruction in the appropriate use of deadly force from their grandfathers at the age of 10: Yes, if someone is about to kill or seriously harm your mother, you should shoot them. No, you cannot shoot someone because you're angry that he stole your bicycle. Yet in America today, apparently 11 citizens out of 12 can reach middle age without having ever once seriously contemplated the circumstances under which the use of deadly force is justified.

"No one here would want to legalize any drugs?" asked Mr. DiGiacomo. Only one juror in 12 raised his hand — in a state which has overwhelmingly voted to legalize medical marijuana, and where two of the most addictive drugs known to man, alcohol and tobacco, have been legal for decades.

Immediately regressing to the behavior of schoolchildren picking on a kid who's given the "wrong answer," many of my remaining 40 companions laughed out loud at this poor fellow's obvious faux pas. But in the most insulting part of the proceedings, Judge McGroarty asked every prospective juror to enter the box, "And will you promise to obey any instructions in the law I may give you, even should you disagree with one or more of them?"

Every nodding little lamb (I never made it into the jury box for questioning, being the 24th alternate) agreed to thus betray their most sacred duty as a juror. A correct answer, for the record, would be to respectfully instruct our servant and employee, the tax-salaried judge: "The honorable court may wish to review the words of founding father and second president John Adams, a quite notable attorney of his time, who said in 1771: 'It is not only (the juror's) right, but his duty ... to find the verdict according to his own best understanding, judgment, and conscience, even though in direct opposition to the direction of the court.' "

Whereupon, the next juror to be asked the same insolent question would patiently refer the ignorant trial judge to the ruling of the D.C. Circuit Court of Appeals in the 1972 case U.S. vs. Dougherty, in which that higher court ruled that all juries have an "unreviewable and irreversible power ... to acquit in disregard of the instructions on the law given by the trial judge. The pages of history shine upon instances of the jury's exercise of its prerogative to disregard uncontradicted evidence and instructions of the judge. Most often commended are the 18th century acquittal of Peter Zenger of seditious libel, on the plea of Andrew Hamilton, and the 19th century acquittals in prosecutions under the fugitive slave law."

Since enforcement of the murder statutes are hardly a matter of current political debate, Judge McGroarty's question was completely unnecessary for this panel, of course. Rather, the reason it's vital for jurors to understand this power inherent in any system of citizen juries is because more than one American in 12 already opposes all gun and drug laws. Convictions for any such invented "crime" will thus immediately become impossible as soon as all citizens have been apprised of their full and proper jury powers. Think how that would clear out the current backlog of the courts, allowing cases involving real crimes — such as murder — to be dealt with far more promptly.

In the end, all 40 of us were dismissed — someone forfeited or withdrew the bail bond, apparently, and the defendant had to be re-arrested and taken into custody when he left the courthouse that afternoon. This was witnessed by some of the prospective jurors, and some appeals court somewhere has previously reversed a murder conviction because the jurors had seen the defendant in handcuffs. So, after wasting a full day of the court's time, and that of the prospective jurors, and of the attorneys (who I suspect will not refund their fees), the court was stuck starting all over again the next day. Where again, I'm sure, Judge McGroarty inappropriately demanded that each prospective juror do what he himself would never consent to do (commit himself in advance to how he will judge the law or its application in a specific case), asking: "And will you promise to obey any instructions in the law I may give you, even should you disagree with one or more of them?"

Vin Suprynowicz is assistant editorial page editor of the daily Las Vegas Review-Journal.

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(JPIK) Basic Information Pamphlet **JURY POWER INFO KIT (JPIK)** $.25 ea.
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CLE **Course Materials** (disk & hard copy), $75 per seminar

(FCIV1) Clay S. Conrad, J.D., Darryl K. Brown, **The Capital Jury / Jury Nullification Within the Rule of Law**
(FCIV2) John Buttrick, J.D./Patricia Michl, J.D., State FIJA coordinators, **New Options for FIJA Bill Language / Building Coalitions and Educating the Public**
(FCIV3) Prof. Michael J. Saks, Michael Minns, J.D./Nancy Lord Johnson, M.D., J.D., **Judicial Nullification/The Continuing Attack Upon Trial by Jury / What to Know Before Going Into Court**
(FCIV4) Rep. Charles Key/Sen. Robert Hedlund/Rep. Lynn Schulte, Keith Hampton, J.D., **The Ongoing Effort to Enact FIJA Legislation / Lobbying Tips and Practices**
(FCIV5) Prof. David C. Brody, Paul Grant, J.D., **Examing the Dougherty 'All-Knowing Assumption' / Recognizing and Protecting Jurors' Rights**
(FCIV6) Mary Ruwart, Ph.D., **How Fully Informed Juries Can Heal Our World / Awards and Supplementarty Presentations**
(FCIV7) Alexander Cockburn, Columnist, Godfrey Lehman, **The Trial Jury and Democracy / Jury Nullification in Historical Context**

SEMINARS

Continuing Legal Education -- Bedford, TX, 1998

(B1LE1) Nancy Lord Johnson, M.D., J.D. **Theories and Themes of the Nullification Case**
(B1LE2) Clay S. Conrad, J.D. **Ethics of a Nullification Defense**
(B1LE3) Mark Besendorfer, J.D. **Conducting Voir Dire for the Independent Verdict**
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(N1LE9) Paul C. Looney, J.D. **Jury Persuasion**
(N1LE10) Andrew Good, J.D. **Putting the Government on Trial**

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(GL102) Godfrey Lehman **We The Jury** $27 ea.
(GL 103) Godfrey Lehman **The Political History of Jury Nullification** $5 ea.
(GL104) Godfrey Lehman **Is This Any Way to Run A Jury?** $15 ea.

ESSAYS

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PUTTING THE GOVERNMENT ON TRIAL

This 7.75 credit hour CLE Seminar is sponsored by the Fully Informed Jury Association and will cover a nullification defense from start to finish. Speakers include:

- **Clay S. Conrad** -Theories & Themes of a Nullification Defense
- **Lawrence Lichter** - Opening Statements
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- **Norm Vroman** - The Role of the Prosecutor
- **Professor David Brody** –Protecting the Jury
- **Paul Looney** - Jury Persuasion & Empowerment
- **Nancy Lord Johnson** - Criminal Prosecutions in Intellectual Property
- **Michael Minns** – Closing Arguments
- **Tony Serra** - What Wins Cases

When: Saturday, September 28th, 2002
Time: Continental Breakfast 7:30 A.M. Registration begins at 8:00 A.M.;
Seminar begins at 8:45 A.M.
Price: $189.00
Where: Hyatt Hotel, 4219 El Camino Real, Palo Alto, CA
For more information: Call or Fax Kathy Ojala at (406)793-5550
Register by Email: hlm5550@montana.com; give name, address & credit card information

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Mail Registration and Payment to: FIJA, P.O. Box 59, Helmville, MT 59843 or register online at: www.FIJA.org

FIJA CONTINUES! FIJAcon V

What: The most important event in the future of FIJA!

When: The weekend of November 16th & 17th

Where: The Fort Lauderdale Marriott North, 6650 N. Andrews Avenue, Fort Lauderdale, Florida. The hotel is offering a special rate of $109.00 for reservations received before October 23,2002. Please call the hotel at 954-771-0440 to reserve your room. (If you would like to share a room, we will try to assist you in finding a roommate.)

How Much: Registration at the door is $100.00. Please register as early as you can! Meal tickets will be $75.00, banquet ticket only is $40.00

As in the past, Friday the 15th before FIJACON will be a Continuing Legal Education seminar for attorneys, activists, and interested public. See details in the CLE advertisement. Please register separately for the CLE if you plan to attend both.

U.S. Congressman Ron Paul (R-TX) has agreed to be our Banquet Speaker on Saturday evening. Tom Stahl, our FIJA board member, will speak. Iloilo Marguerite Jones, our new Executive Director will talk and other speakers will be announced as they are confirmed.The agenda and full details will be reported in the next FIJActivist.

We hope to see you all there to help make this the most successful FIJAcon ever!

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Mail Registration and Payment to: FIJA, P.O. Box 59, Helmville, MT 59843 Or register online at: www.FIJA.org